



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

September 26, 2023

BY ECF

The Honorable Vernon S. Broderick
United States District Judge
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Riverkeeper, Inc. v. Regan*, No. 17 Civ. 4916 (VSB)

Dear Judge Broderick:

On behalf of defendants and with the consent of all parties, I write to provide the Court a status update as provided in the Court's endorsed order dated March 13, 2023 [ECF No. 196]. Since March 13, the parties have continued their discussions regarding intervenor-defendant New York State Department of Environmental Conservation's ("NYSDEC") advanced notice of proposed rulemaking, which was referenced in defendants' August 10, 2022 letter to the Court [ECF No. 184].

On April 12, 2023, NYSDEC published a notice of proposed rulemaking to amend Parts 701 and 703 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York. *See* 14:15 N.Y.S. Register I (Apr. 12, 2023),¹ *as amended*, 14:17 N.Y.S. Register 10 (Apr. 26, 2023).² This proposed rule is the first of two contemplated NYSDEC rulemakings. It proposes to amend water quality standard regulations for four classes of saline waters, including revisions regarding enterococci criteria relevant to this litigation. NYSDEC anticipates filing this first rule with the New York State Department of State by Friday, September 29, 2023.

The second NYSDEC rulemaking is anticipated to reclassify specific saline waters at issue in this litigation into different classes governed by the amended water quality standard regulations. An issue has arisen regarding the timing of that second rulemaking, and to facilitate the parties' discussion and resolution of that issue, defendants respectfully request that the Court continue to hold in abeyance any action on the parties' pending cross-motions for summary judgment and NYSDEC's motion to amend its answer to assert a cross-claim against EPA [ECF Nos. 128, 150, 145, 154, 173], for 30 days, until **November 1, 2023**. Defendants further propose that the parties submit a joint status letter to the Court on or before **October 27, 2023**. The parties further agree that any party may file a letter with this Court to terminate the abeyance period prior to October 27, 2023, but must first notify the remaining parties at least two weeks prior to filing its letter, with the parties to engage in a meet and confer as soon as reasonably practicable. This is the defendants' seventh request on consent for the Court to hold these

¹ <https://dos.ny.gov/april-12-2023vol-xlv-issue-15>.

² <https://dos.ny.gov/april-26-2023vol-xlv-issue-17-book-1-2>.

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motions in abeyance. Plaintiffs and intervenor-defendants NYSDEC and the City of New York consent to this request.

We thank the Court for its consideration of this request.

Respectfully,

DAMIAN WILLIAMS
United States Attorney

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cc (via ECF): All counsel of record